IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.653 OF 2007

Kanji Bhanushali. ..Petitioner.

V/s.

Chemfert Traders(Bombay) Pvt.Ltd. ..Respondent.

Mr.Pratap B. Kapadia for Petitioner.

Mr.R.A.Shaikh for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : NOVEMBER 30, 2007.

P.C. :

1. In this case, Office has declined to accept the rejoinder affidavit tendered on behalf of the Petitioner on the premiss that rejoinder affidavit can be placed on record with the leave of the Court, which position emerges from conjoint reading of Rule 642 with Rule 645 of the High Court Original Side Rules. That construction put by the Company Registrar seems to be plausible. No fault can be found with the Office for having refused to accept rejoinder tendered on behalf of the Petitioner. However, by way of indulgence, the Petitioner has been permitted to file rejoinder affidavit in the present proceeding and the same is taken on record.

2. Heard Counsel for the parties. Perused the relevant pleadings and documents on record.

3. In my opinion, there is substance in the argument of the Respondent that the present Petition is devoid of merits. Firstly, the stand of the Respondent on the point that the claim of the Petitioner is barred by limitation will have to be accepted. This is so because, notice sent by the Petitioner dated 24th November, 2006 itself acknowledges the fact that the Respondent had agreed to pay the suit amount on April, 2004. In that case, limitation would start running from end of April, 2004. The suit notice was given on 24th November, 2006, whereas the present Petition has been filed on 23rd July, 2007 in respect of the time barred claim. The argument of the Petitioner is that the notice indicates that the Respondent was liable to repay the amount in April, 2004 and on demand, which would mean that as and when the amount is demanded the respondent would become liable to repay the amount irrespective of the demand being posterior to April, 2004. According to the Petitioner the demand is made by legal notice on 24th November, 2006, on which the limitation would start running against the Petitioner and as the present Petition is filed on 23rd July,

2007 will have to be treated as within limitation. It is not possible to accept this submission. The exact phrase used in the legal notice reads thus-"Under said writing you have agreed to repay on April 2004 and on Demand." The plain language of this claim, to my mind, would only indicate that if the Petitioner was to demand the amount prior to April, 2004, the Respondent would be liable to repay the same even before that date. The said "on April, 2004 and on Demand" cannot be read to mean that if the demand is made after April, 2004, the limitation to repay the amount would start running from such date i.e. 24th November, 2006, as in the present case. Thus understood, the Petition will have to be thrown out at the threshold on the finding that the present Petition is founded on the claim which is time barred claim.

4. Besides, the Respondents have disputed execution of document which is pressed into service on behalf of the Petitioner. Xerox copy whereof is annexed as Exh.-1 to the reply affidavit. According to the Petitioner the signature appearing on this document is of the director of the Respondent company and there is no similarity with the admitted signature of the said Minesh Chandubhai Patel who has

filed his affidavit and vakalatnama on behalf of the Respondent in this Court. On bare comparison of the signature appearing on the reply affidavit and the document in question, there are some dissimilarities. It is not necessary for me to elaborate on the said dissimilarities in the present proceeding. Suffice it to observe that dispute has been raised on behalf of the Respondent company regarding liability arising under the document pressed into service on behalf of the Petitioner. Dispute seems to be genuine dispute raised by the Respondent company. The stand of the Respondent is supported by the record and books of account that there is no corresponding entry of such amount received by the Respondent company as such. It is not necessary for me to address the other issues raised at the time of argument in detail. In my opinion, this is not a fit case for admission. Hence, Petition is rejected.

(A.M.KHANWILKAR,J)